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 Does*

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

COURTNEY MCMILLIAN and RONALD
 COOPER,

Plaintiffs,

v.

X CORP., f/k/a/ TWITTER, INC.,
 X HOLDINGS, ELON MUSK, Does,

Defendants.

Case No. 3:23-cv-03461-TLT

**DEFENDANTS' ADMINISTRATIVE
 MOTION FOR LEAVE TO FILE
 SUPPLEMENTAL BRIEFING**

Judge: Trina L. Thompson
 Magistrate Judge: Robert M. Illman
 Date: June 18, 2024
 Time: 2:00 pm PT

Pursuant to Civil Local Rules 7-3(d) and 7-11, Defendants X Corp., X Holdings Corp., and Elon Musk (together “Defendants”) respectfully submit this Administrative Motion for Leave to File Supplemental Briefing in Support of their Motion to Dismiss the Amended Complaint (Dkt. 38), and in response to Plaintiffs’ Answers to the Court’s Notice of Questions (Dkt. 75).

On April 3, 2024, the Court entered a Notice of Questions (Dkt. 65), instructing the parties to answer eight questions posed by the Court about, among other things, Plaintiffs’ claim that Twitter Inc. maintained an ERISA-governed severance plan. At the same time, the Court vacated the oral argument related to Defendants’ Motion to Dismiss that had been scheduled for April 9, 2024. Plaintiffs filed their Answers to the Court’s Notice of Questions on April 12, 2024. Dkt. 75 (the “Answers”). Plaintiffs’ Answers contain additional arguments and allegations not included in the parties’ Motion to Dismiss briefing or Plaintiffs’ Amended Complaint. Plaintiffs also submitted new documents that had not been attached to the Amended Complaint, including one titled “Twitter Acquisition: Tweep FAQ” and a “Declaration of Courtney McMillian” (Dkt. 75-1). The McMillian Declaration purports to assert new facts, including references to and descriptions of the so-called “Severance Matrix” that is currently filed under provisional seal.

Defendants have not had the opportunity to respond to Plaintiffs’ new allegations, legal arguments, and documents. To the extent such new information is considered by the Court in connection with Defendants’ pending Motion to Dismiss—and thus deemed to supplement the Amended Complaint—Defendants will be significantly prejudiced without the opportunity to respond as to the sufficiency of such new allegations and legal arguments to state a claim under Rule 12(b)(6). Therefore, Defendants respectfully request permission to submit a short (5-page) supplemental brief addressing Plaintiffs’ Answers for the purposes of the pending Motion to Dismiss.¹

¹ On April 9, 2024, Plaintiffs filed an Administrative Motion for Leave to File a Sur-Reply responding to Defendants’ Reply in Support of their Motion to Dismiss. Dkt. 67. Defendants filed an opposition to Plaintiffs’ motion. Dkt. 72. On April 15, 2024, Defendants proposed to Plaintiffs that the parties stipulate to allow both sides additional briefing. As part of the stipulation, Defendants would withdraw their opposition to Plaintiffs’ untimely Administrative Motion for Leave to File a Sur-Reply, and Plaintiffs would not oppose Defendants’ supplemental briefing or a short sur-sur-reply. On April 16, 2024, Plaintiffs rejected the proposed stipulation. Should the Court grant Plaintiffs’ Administrative Motion for Leave to File a Sur-Reply, Defendants request permission to file a short sur-sur-reply.

1 Dated: April 19, 2024

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2 By /s/ Melissa Hill

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